

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3516

IN THE MATTER OF:

Served June 8, 1990

Application of PULLIN'S TOURS,)
INC., for Special Authorization to)
Conduct Charter Operations Pursuant)
to Contract with Congressional)
Youth Leadership Council, Inc.)

Case No. CP-90-02

By application filed May 16, 1990, Pullin's Tours, Inc. (PTI or applicant), seeks authority pursuant to WMATC Special Certificate of Public Convenience and Necessity No. 1 to transport students and teachers in charter operations under contract with Congressional Youth Leadership Council, Inc. (CYLC), between Georgetown University, Washington, DC; Gallaudet University, Washington, DC; and the National 4-H Center, Chevy Chase, MD, on the one hand, and, on the other, points in the Metropolitan District.

Order No. 3505, served May 21, 1990, generally described the evidence submitted with the application, and that order is incorporated by reference herein. The Commission required publication of notice and the filing of an affidavit of publication and a tariff cover sheet in conformance with Commission Regulation No. 55-04. Protests were required to be filed no later than June 4, 1990.

On June 4, 1990, American Coach Lines, Inc., a Virginia corporation (ACL-VA), timely protested the application on the basis of fitness. ACL-VA holds WMATC Certificate No. 103 which authorizes it to transport passengers in various charter and special operations between points in the Metropolitan District. Pursuant to WMATC Certificate No. 103 ACL-VA has served CYLC in the past. ACL-VA alleges that applicant has not established its fitness to conduct the proposed operations. ACL-VA bases its claim on the fact that applicant has a safety rating of "conditional" assigned to it by the United States Department of Transportation (USDOT). Applicant's safety rating was confirmed by USDOT on June 4, 1990, the letter indicating the nature of the violations which resulted in the conditional rating.

Commission Regulation No. 70 provides that an application of this type will be granted if it is determined that the applicant is fit, willing, and able properly to perform the proposed service and to conform to the provisions of the Compact and the rules, regulations, and orders of the Commission thereunder, and if it is determined that the proposed operations conform to the provisions of Regulation No. 70. The issue of whether the public convenience and necessity require such service has been determined in Case No. MP-79-04. See Order No. 2004, served June 20, 1979.

The initial determination of an application filed under Commission Regulation No. 70 is made by the Commission's Executive Director. The determination must be based on the pleadings of record. The record in this case indicates that applicant's USDOT safety rating is "conditional" 1/ -- a status between "satisfactory" and "unsatisfactory." PTI's rating was assigned after review and evaluation conducted September 17, 1987. Thus, the rating is now almost three years old. Nonetheless, the record is silent regarding any requests by PTI for a re-audit by USDOT or any corrective measures taken to rectify those problem areas responsible for PTI's less than satisfactory safety rating. 2/ Evidence of past violations creates a rebuttable presumption of unfitness which is unrebutted on the record in this case.

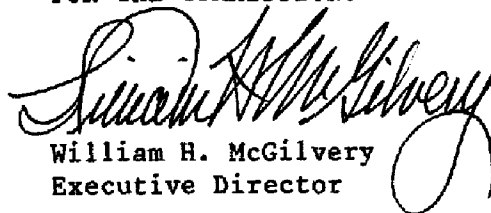
When faced with a similar situation, the Interstate Commerce Commission (ICC) has directed its staff to reject such applications for new authority. The ICC decided that the existence of a less than satisfactory safety rating automatically renders a carrier ineligible for new authority. This specific issue has not previously been presented to the Commissioners of WMATC and is, therefore, a case of first impression.

The question of fitness will be determined against applicant. In arriving at this determination, consideration has been given to the ICC's decision of November 18, 1988, Ex Parte No. 55 (Sub-No. 71), and the ICC's rationale in directing that applications filed by passenger carriers with conditional or unsatisfactory safety ratings be rejected.

Upon application for reconsideration this matter will, by statute and regulation, be placed before the full Commission for decision. This is especially appropriate for determination of an issue of precedential importance.

THEREFORE, IT IS ORDERED that the application of Pullin's Tours, Inc., in Case No. CP-90-02 is hereby denied.

FOR THE COMMISSION:


William H. McGilvery
Executive Director

1/ PTI's conditional rating was based on problems involving 49 CFR §§ 391, 394, and 396: qualifications of drivers; reporting of accidents; and inspection, repair, and maintenance of equipment, respectively. WMATC adopted these USDOT safety regulations by cooperative agreement entered in 1971.

2/ USDOT now requires verification of corrective measures taken in an effort to correct problems uncovered at audit.